

## **KEY PROVISIONS IN AGOA III**

- I. Additional Non-apparel Trade Benefits.** The key non-apparel trade provisions are as follows:
- ▶ **Extension – Overall AGOA Program.** The bill extends the program until 2020.

**Reason for provision.** All AGOA benefits (apparel and otherwise) expire in 2008. The President has already indicated he will support an extension of the overall program beyond 2008, but has not indicated how long.

- ▶ **Elimination of the Import Sensitivity Test.** The bill eliminates the import sensitivity test. As a result, all products meeting the relevant AGOA rule of origin are automatically extended preferential treatment.

**Reason for provision.** Under current law, the President may extend preferential treatment to any product (except statutorily-excluded products) once he has received advice from the U.S. International Trade Commission (ITC) about whether the product is “import sensitive.” The President is not required follow the ITC’s advice about import sensitivity; however, in practice, he usually does (that is, he typically will not extend preferential treatment to any product the ITC has identified as import sensitive).

We believe that the import sensitivity test should be eliminated for the following reasons: (1) the other region-specific preferential trade programs (i.e., CBI and the ATPA) do not include an import-sensitivity test; (2) the decision about removal of a product typically is political, although the ITC does provide the President with an economic analysis; and (3) AGOA trade ministers have identified removal power as a problem, both in terms of actual denial of

products,<sup>1</sup> and the threat of its use has had a chilling effect on investments.

- **Extension of Duty-Free Treatment to Statutorily-Excluded Agricultural Products and Creation of an Agricultural Safeguard.** The bill extends preferential treatment to statutorily-excluded agricultural products. This would include peanuts, sugars, cocoa powders and chocolates, and tobacco—products that some AGOA countries produce or could produce. The bill also creates a special agriculture safeguard to ensure that extension of this preferential treatment does not adversely affect U.S. producers.

**Reason for provision.** AGOA, like all U.S. preferential trade programs, has a statutory limitation on preferential treatment for specified agricultural products. (The products for which limited preferential treatment is provided are those subject to a tariff-rate quota regime (TRQ regime).)<sup>2</sup> We understand that AGOA beneficiaries could increase exports of these products if the limitations were removed. (Products that would be of particular interest to AGOA beneficiaries include peanuts, sugars, cocoa powders and chocolates, and tobacco.)

This provision is likely to be controversial for some Members, because it may affect certain sensitive sectors of U.S. agriculture. Therefore, the bill includes an **agricultural safeguard** to address concerns. The safeguard is based on the Chile FTA agricultural safeguard and is priced-based. (For example, if the import price of a

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<sup>1</sup>The following products have been denied preferential treatment because of the import sensitivity test: dried garlic, frozen fruit, preserved/prepared apricots, preserved/prepared mixed fruits, silicon, and certain steel products.

<sup>2</sup>TRQ regimes operate in the following manner: imports up to a specified quantity are subject to a relatively low tariff; imports above the specified quantity are subject to a prohibitively high tariff. Under U.S. preferential programs, preferential treatment is only provided for imports within the in-quota amount; for imports above the quota amount, the rate remains the same.

sugar shipment from an AGOA beneficiary fell below a certain level, a duty would be levied against the import.)

**II. Additional Apparel Trade Benefits.** The key apparel trade provisions are as follows:

- ▶ **Extension – Apparel Benefits for Least Developed Countries – Four Year Extension.** The bill extends the third country fabric benefits available for least developed countries for four years. It would allow the President to provide limited benefits to specific countries for up to two additional years, if he finds that a country has made significant efforts to increase domestic fabric production, but still lacks sufficient domestic capacity.

**Reason for provision.** Under current law, least-developed AGOA beneficiaries can use third country fabric in qualifying apparel until October 2004. This flexibility was included in AGOA I, because few of these countries have fabric-making capacity. The LDCs have expressed a strong desire to extend the third-country fabric provision because sufficient fabric-making capacity still does not exist in the region, and because the countries are expecting a significant drop in production with the elimination of world-wide apparel quotas in 2005. (On the latter point, we expect global apparel production to consolidate down to a few countries – such as China, India, and Pakistan – once quotas are removed. Therefore, we need to create sufficient incentives to maintain existing production in SSA, including by providing an extension for third country fabric.)

- ▶ **Modifications to the Rules of Origin for Apparel Rule.** The bill eliminates nuisance provisions in the apparel rule of origin. The bill achieves this goal by modifying the AGOA rule of origin for apparel so that the rule of origin applies only to the “essential component” of a garment. (The NAFTA also takes this approach.)

**Reason for provision.** AGOA has fairly onerous rules of origin for apparel, including requirements that all elements of a garment meet the specified rule of origin. Importers have told us that the rules

create a disincentive for sourcing in Africa, in part because of onerous record-keeping requirements, and in part because the rules are not commercially feasible. Importers have indicated that use of the “essential component” approach would make it more attractive to source from SSA.

(An example of how the essential component rules operates: under current law, a knit shirt must be made entirely from fabric woven in the region. A shirt (such as a polo style shirt) that has collars and cuffs knit-to-shape in Asia, but is attached to a shirt otherwise made from regional fabric, does not qualify as an AGOA product. Under the essential component rule, such a shirt would qualify as an AGOA product because the major component of the garment, the shirt body, meets the rule of origin.)

- **Provision of Benefits for Certain Ethnic Printed Fabric.** The bill allows the President to designate certain ethnic printed fabric made from U.S. or regional fabric and U.S. or regional yarns as eligible for preferential treatment.

**Reason for provision.** A number of AGOA beneficiaries produce ethnic printed fabrics that are distinct from and do not compete with textiles manufactured in the United States for use in apparel or flat goods. These ethnic printed fabrics are not, however, considered within the existing definition of “hand-loomed, handmade, and folklore article” in the AGOA statute. The bill amends that definition to allow the President to designate specific ethnic printed fabric as eligible for preferential treatment.

- **Sense of Congress on Including Preferences for AGOA Countries in U.S. FTAs.** The bill directs USTR to negotiate FTAs with other countries that allow use of AGOA inputs in meeting textile and apparel rules of origin. (That is, USTR would negotiate rules in the U.S.-SACU FTA, U.S.-Morocco FTA, and the CAFTA that allow AGOA yarns and fabrics to be used in the production of apparel.)

**Reason for provision.** This provision is aimed at creating new markets for AGOA textiles products, thereby creating additional incentives for investment in textiles facilities.

**III. Support for Development Assistance.** The bill includes a number of provisions aimed at enhancing AGOA beneficiaries' ability to export to the United States.

- ▶ **Assistance for AGOA Products to Meet U.S. Technical Agricultural Standards.** The bill directs the Secretary of Agriculture to assign 20 full-time personnel to provide technical assistance to farmers and agricultural exporters seeking to meet technical requirements to export to the United States, and authorizes USAID to fund programs aimed at enhancing AGOA agricultural exports to the United States.

**Reason for provision.** The provision responds to complaints from many AGOA countries that AGOA agricultural products cannot enter the United States, because they do not meet U.S. sanitary/phytosanitary requirements.

- ▶ **Plan to Assist Trade in Agriculture.** The bill directs the President to: identify African products that can be exported to the United States; analyze the challenges African farmers face exporting these products; and develop a strategy for increasing agricultural exports from sub-Saharan Africa.

**Reason for provision.** This provision responds to the difficulties faced by African farmers to export agricultural products.

- ▶ **Assistance in Developing Trade Priorities and Opportunities.** The bill directs USAID to commission individual studies of the economies of each AGOA beneficiary country. The studies are to identify growth sectors and export opportunities for the country, and areas where the country requires technical assistance to take advantage of such opportunities.

**Reason for provision.** The provision responds to concerns the AGOA Diplomatic Corps. has raised about AGOA countries' inability to utilize the market access opportunities afforded by AGOA.

- ▶ **Assistance Developing Infrastructure to Support EcoTourism and Boost Trade Flows.** The bill directs the President to develop and implement policies to encourage the development of infrastructure projects that will help to increase trade capacity and a sustainable ecotourism industry.

**Reason for provision.** The provision responds to the dire need to develop infrastructure (water, energy, transportation, and telecommunications systems) in sub-Saharan Africa. Ecotourism is a rapidly growing industry where Africa holds a real global competitive advantage. It creates jobs and is responsible to the environment. The ecotourism industry can sustain the types of infrastructure needed to increase two-way trade while trade capacity develops.

- ▶ **OPIC and Exim Assistance.** The bill directs Exim and OPIC to support projects in AGOA beneficiaries in the areas of ecotourism, agriculture, textiles and apparel, and other export industries.

**Reason for provision.** The re-authorization bills for OPIC and Exim have included general restrictions on either agency providing funding for projects that could affect import sensitive industries in the United States. These general restrictions have resulted in OPIC and Exim refusing to fund projects related to textiles and apparel, and agriculture, despite the fact that the restrictions do not prohibit funding in specific sectors. This provision is intended to signal to both agencies that Congress would like funding in these sectors in AGOA beneficiary countries.

- ▶ **Bilateral Investment Treaties.** The bill directs USTR to negotiate investment treaties with interested AGOA countries.

**Reason for provision.** Investment treaties reduce uncertainties and risk that arise from investing in developing countries.

**IV. Tax Provisions.** The bill includes three tax-related provisions.

- ▶ **Direction to Negotiate Tax Treaties.** The bill directs the Secretary of the Treasury to negotiate treaties against double taxation with appropriate AGOA countries.

**Reason for provision.** The United States is currently a party to dozens of international tax treaties with other countries. These treaties prevent double taxation for U.S. firms operating abroad, and include transparency requirements for other countries' systems of taxation. We believe negotiation of such treaties with AGOA beneficiaries could create incentives for U.S. companies to do business in SSA.

- ▶ **Assistance in Developing Tax Regimes.** The bill directs the U.S. Treasury Department and USAID to provide assistance to AGOA countries to improve internal tax collection.

**Reason for provision.** The purpose of the tax project is to respond to concerns expressed by some AGOA countries that they cannot reduce their tariffs because tariffs are the government's primary source of revenue.

- ▶ **Tax Deduction for Certain Donations.** The bill allows a tax deduction to U.S. firms with operations in AGOA countries that make a cash contribution to the Global Fund to fight HIV/AIDS, Malaria and Tuberculosis.

**Reason for provision.** The provision is aimed at stimulating donations to the Global Fund. Since its inception in January 2002, the Fund has secured \$1.5 billion in funding; however, this amount will not cover grant awards made to date. The Director of the Fund estimates that at least an additional \$3 billion must be raised by the end of 2004 to cover existing grants, and expected new grants. (Under current law, taxpayers receive a tax deduction for contributions to domestic charities, but cannot claim the same deduction when the contribution is to a foreign charity such as the Global Fund.)

## V. Other.

- ▶ **Sense of Congress on SSA Country Participation in the WTO.** The provision states that AGOA beneficiaries will benefit if they implement existing WTO obligations, and participate fully in on-going WTO negotiations.

**Reason for provision.** This section addresses the concern that AGOA creates a disincentive for AGOA beneficiaries to implement fully existing WTO obligations and participate in the current WTO negotiations. (The argument that AGOA creates a “disincentive” is as follows: AGOA beneficiaries already have enhanced access to the U.S. market under AGOA, so they do not see as great a need to participate in the WTO, where they would be required to make reciprocal market access commitments to the United States.) The section does indicate that while Congress believes AGOA beneficiaries should engage in multilateral trade negotiations and make reciprocal market access and other commitments, Congress recognizes that AGOA beneficiaries are at a lower level of economic development, so they should not be expected to make commitments identical to what developed countries make.

- ▶ **Sense of Congress on Regional Economic Integration.** The provision states that AGOA beneficiaries will benefit if they take steps to promote regional economic integration, including by pursuing regional free trade agreements.

**Reason for provision.** This section addresses the concern that some of the major trade barriers to developing country exports are barriers maintained by other developing countries, particularly developing countries within a region. The provision expresses the Sense of Congress that AGOA beneficiaries will benefit if they eliminate such barriers through regional FTAs.